

Hearing on "Compulsory Video Licenses of Title 17"

United States House of Representatives Committee on the Judiciary

Subcommittee on Courts, Intellectual Property, and the Internet

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Statement of Marci Burdick Schurz Communications, Inc.

On behalf of the National Association of Broadcasters

Introduction and Summary

Good afternoon, Chairmen Coble and Goodlatte, Ranking Members Nadler and Conyers, and members of the Subcommittee. My name is Marci Burdick, and I am Senior Vice President of the Electronic Division for Schurz Communications, which owns 11 television stations and has operating partnerships with two others. I am testifying today in my capacity as Television Board Chair of the National Association of Broadcasters (NAB), and our more than 1300 free, local, over-the-air-television station members from across the country.

In the short time I have before this Committee this afternoon, my testimony will focus on only one of the video compulsory licenses contained in Title 17. That is the Section 119 distant signal license for satellite providers, which is scheduled to sunset this year, and whose reauthorization is very much on the minds of the broadcast industry. I am happy, however, to answer any additional questions you may have on the role that the other video compulsory licenses play in both helping and hindering broadcasters' ability to serve your constituents. The local-into-local licenses in particular are critical components of the current legal framework that enable broadcasters to provide free locally-focused service that is unique among all entertainment mediums to every community in America.

I. STELA

NAB's position on a potential Satellite Television Extension and Localism Act (STELA) reauthorization is two-pronged. First, we ask that this Committee take a hard look at whether the satellite distant signal license continues to benefit consumers.

Enacted as a temporary fix when satellite technology was insufficient to offer local broadcast TV stations to its subscribers, today's satellite distant signal license has become unnecessary with advances over the past 26 years and, in fact, harms certain viewers that might otherwise receive their local broadcast networks instead of a distant alternative. Furthermore, as a compulsory copyright license that is coupled with an exemption from the retransmission consent right in the Communications Act, the distant signal license is a government restriction on the intellectual property rights of broadcasters that undermines our ability to negotiate for fair market rates.

Second, should this Committee conclude that reauthorization of this <u>satellite</u> bill is still needed in spite of its pitfalls – despite the fact that it does not benefit our industry – NAB could support a narrow, temporary reauthorization that does nothing to expand the scope of the license or undermine broadcasters' ability to serve our local communities. In particular, the pay-TV industry is lobbying for "reforms" that would undermine local broadcasters' right to be fairly compensated for programming. The Committee should reject these proposals. Broader consideration of those laws is more appropriately conducted holistically as part of this Committee's comprehensive review of the Copyright Act and, due to the interwoven structure of current copyright and communications statutes, in conjunction with the Energy and Commerce Committee's review of the Communications Act. As it pertains to STELA, NAB prefers no bill to a harmful bill.

Twenty-six years ago, Congress enacted the first satellite television authorization, the Satellite Home Viewer Act (SHVA), as a means to help spur competition for home video delivery against incumbent cable monopolies and to

promote the broad consumption of locally-focused broadcast television without undermining the viability of its uniquely free business model. Now, two and a half decades later, it is clear that this Committee's work was a success, as the satellite companies have evolved into the country's second and third largest pay-TV providers, and broadcast television is as popular as ever – 97 of the top 100 most watched prime shows in the 2012-13 television season aired on our stations.¹

SHVA enabled satellite carriers to retransmit the signals of distant television network stations to satellite households. At the time it was enacted, the distant signal license was needed to provide certain "unserved households" with network programming because satellite companies were unable to provide local broadcast stations to subscribers. Today, when DISH and DIRECTV have achieved a size and scope that makes them dominant market leaders, the distant signal license has become a vestige of a bygone era, a time before fiber optics, compression technology and digital. Congress anticipated satellite technology would improve, which is why each of the satellite laws have included a five year sunset.

Now, over 98 percent of all U.S. TV households can view their local network affiliates by satellite. Further, as DISH has demonstrated, there are no longer technical reasons preventing any market from receiving local-into-local broadcast service, and no public policy justifies treating satellite subscribers in markets that can be serviced with local signals as "unserved" and, therefore, eligible to receive distant network stations

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¹ The Nielsen Company-NTI, HH Live and SD Estimates, September 24, 2012 - May 22, 2013, compiled by Television Bureau of Advertising.

instead. A viewer in North Carolina or New York is not benefited by service from a Denver ABC feed instead of his or her local WXLV or WABC.

This Committee should continue to encourage localism, and take a hard look at whether consumers would benefit if Section 119 is allowed to sunset as Congress originally intended. An important component to that examination is identifying the precise number and nature of households that the Section 119 license continues to serve – including the number that are grandfathered subscribers – and whether those households could be otherwise served by a local signal.

II. Localism

Localism underpins the American broadcast television model, and should be the starting point for examining both STELA and the legal framework governing the relationship between broadcasters and the satellite and cable companies. In crafting SHVA and its progeny, Congress strived to promote this local model by adhering to two interrelated policy objectives: (1) enabling the wide availability of locally-focused, overthe-air television programming in American television households while (2) ensuring that the satellite retransmission of television broadcast signals did not discourage broadcasters from continuing to offer this television service for free, over-the-air.² These noble objectives should continue to guide your review of legislation today.

Why is broadcast localism so important? Localism is local news, severe weather coverage and emergency alerts, school closings, high school sports, local election coverage and public affairs. Localism is support for local charities, civic organizations

4

² S. Rep. No. 92, 102 Cong., 1st Sess. 36 (1991).

and events that help create a sense of community. Locally-based broadcast stations are also the means through which local businesses educate and inform the public about their goods and services and, in turn, create jobs and support local economies. Local broadcasters address the needs of the public based on a familiarity with and commitment to the cities and towns where they do business. This free local service is our focus, and it differentiates American broadcast television both from our peers around the world, as well as every other medium here at home.

In 2013, Schurz's WDBJ-TV in Roanoke, VA added jobs and resources by investing in a new local news bureau in Forest, VA, just as it had done previously in Danville and will do again this year in Martinsville. But Schurz is not alone: the local TV stations serving the Commonwealth of Virginia produced a total of 57,044 hours of original, live, local, newscasts in 2013. This represents an increase in live local news hours for a fourth consecutive year.

Broadcasters' commitment to localism has never been stronger, and there is no doubt that our viewers – your constituents – continue to rely on our locally-focused service. Local TV stations deliver high quality local news, weather and emergency updates to all Americans, both rural and urban, and are a critical communications platform to those constituencies that are underserved by other mediums. Broadcasters are continuously looking for ways to enhance our newscasts, upgrade our local weather forecasts and emergency services, and provide accurate, efficient and speedy coverage of breaking news events and their aftermath. No other medium provides the depth of coverage we provide for locally focused events, paired with the most-watched entertainment programming on prime time television.

In the name of localism, NAB is attentive to the concerns raised by two members of this Committee whose constituents reside in counties located in out-of-state

Designated Market Areas, but desire to receive news, weather, and public affairs programming from an in-state network affiliate. The solution is not to legislatively pick apart Nielsen's system of DMAs, which may not be perfect in all instances but is integral to local businesses' ability to reach relevant consumers through broadcasters' unique local advertising model. Instead, NAB and local broadcasters are committed to making in-state broadcast programming available through existing statutory remedies, such as use of the "significantly viewed" option, and to finding marketplace solutions for carriage of non-duplicative, in-state broadcast programming where necessary to meet your constituents' viewing interests. We caution this Committee against legislating new exceptions to copyright law when, in many instances, cable and satellite are not taking full advantage of existing and available statutory or marketplace options to carry in-state broadcast programming.

III. Retransmission Consent

The retransmission consent right is contained within the Communications Act, and was established by Congress in 1992. Retransmission consent recognizes local broadcasters' property interest in their over-the-air signal, permitting them to seek compensation from cable and satellite operators and other multichannel video programming distributors for carriage of their signals.

In the course of the Committee's reexamination of STELA, it is likely to hear from pay-TV interests seeking enactment of new exceptions to the <u>copyright laws</u> that would

undermine broadcasters' retransmission consent rights. Specifically, a change in law that would permit a satellite carrier to import a distant signal – not based on need, but to gain unfair market leverage in a retransmission consent dispute – would be contrary to decades of Congressional policy aimed to promote localism. Such a proposal would undermine the locally-oriented contractual exclusivity of the network-affiliate relationship by delivering to viewers in served households – *i.e.*, those who can already watch their own local ABC, CBS, FOX, Univision and NBC stations – network programming from another distant market. This importation of duplicative distant network programming jeopardizes the viability of the local network-affiliated stations that offer the local news, weather and emergency information that viewers value. Additionally, it undercuts the rights of content owners, who invest significant money to produce popular programming, to control the distribution of their product.

Both local broadcasters and pay-TV providers have an incentive to complete retransmission consent negotiations in the marketplace before any disruption to viewers occurs and, for that simple reason, they almost always do. As a result, carriage disruptions from retransmission consent impasses represent only one-hundredth of one percent (0.01%) of annual U.S. television viewing hours.³ That means consumers are more than 20 times more likely to lose access to television programming from a power outage than a retransmission consent impasse. Furthermore, in the small number of instances where these negotiations have resulted in disruptions to consumers, there is one distinct pattern – the involvement of Time Warner Cable, DIRECTV, and DISH.

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³ See Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 20 (May 27, 2011), attached to NAB Comments in MB Docket No 10-71 (filed May 27, 2011).

Since 2012, over 90 percent of broadcast television carriage disruptions nationwide are attributable to just these three companies.

Opponents of retransmission consent cite rising retail cable and satellite bills as justification to "reform" retransmission consent. However, retransmission consent fees are not possibly responsible for the steep increase in cable bills and NAB has demonstrated this across numerous economic studies.⁴ Moreover, broadcast carriage fees represent only a fraction of total programming costs. It is estimated that only two cents of every cable bill dollar goes to broadcast retransmission consent, in spite of its ratings.

The truth is that cable and satellite operators are seeking to limit one of their operating costs – in this case, broadcast programming – and asking for Congress's help, not to lower cable bills, but to increase their own profit. The rise in cable rates outpaced inflation long before a penny of retransmission consent was paid to broadcasters, and continues to do so today.

Local television stations across the country urge the Committee to resist the overtures of a few bad actors in the pay-TV marketplace whose intent is to create an artificial crisis, requiring Congress to "fix it". Doing so would pose significant harm to the locally-focused broadcast model that has served the viewing public so well for decades and, as part of a STELA reauthorization, inject unnecessary controversy and risk of delay.

⁴ Eisenach & Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon* (April 2010), Appendix A to the Opposition of the Broadcaster Associations, MB Docket No. 10-71 (May 18, 2010) at 13-17, 21-22 (demonstrating that even a "flawed analysis" conducted for MVPD interests "shows little effect of retransmission consent fees on consumers," and that retransmission fees make up a small fraction of MVPD programming costs and an even smaller percentage of MVPD revenues).

Conclusion

We ask you to take a hard look at whether the Section 119 license continues to service consumers, and urge you to reject calls from the satellite providers to expand the scope of the compulsory Section 119 license in order to give them a leg up in market-based retransmission consent negotiations. Moreover, we urge you to reject any attempt to add wholly unrelated or controversial provisions to a STELA bill that would benefit the pay-TV industry at the expense of broadcasters and consumers.

Thank you for inviting me to testify before you today. I am happy to answer your questions.